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Supreme Court, U.S.
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5-14-90

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

BEULAH W. BOOKER,
PETITIONER

VERSUS

PAUL E. RILEY, JUDGE, ET AL.,
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO SIXTH CIRCUIT COURT OF APPEALS

PETITIONER APPENDIX FOR WRIT OF CERTIORARI

BEULAH W. BOOKER
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

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IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

BEULAH W. BOOKER,

Plaintiff,

vs.

CASE NO. 85-9
(Judge William H. Wolff, Jr.)

DELCO MORAINE DIVISION
GENERAL MOTORS CORPORATION,
et al.,

Defendants

ORDER SETTING CHAMBERS PRE-CONFERENCE ON MAY 7, 1985 AT 8:45 A.M.

::::::::::::::::::

This case is hereby set for a pretrial conference in chambers on the 7th day of May, 1985 at 8:45 a.m.

The attorneys are ordered to review their files prior to pretrial, and to be prepared to discuss discovery matters, applicable pretrial motions, and settlement possibilities. Counsel are required to meet one week prior to the pretrial to seek an amicable disposition.

SO ORDERED

WILLIAM H. WOLFF JR., JUDGE

Copies of this Order were served on all parties listed below by ordinary mail this date of filing.

BEULAH W. BOOKER, Plaintiff, 643 Miami Chapel Rd. Dayton, Ohio 45408

ROBERT J. DAVIDEK, Attorney for Defendant Delco Moraine, 2580 Kettering Tower, Dayton, Ohio 45423

G. JACK DAVIS, JR., Attorney for Industrial Commission of Ohio, Assistant Attorney General, 803 East Fifth Street, Dayton, Ohio, 45402

Thomas Roberts, Bailiff

ENRIQUE C. MARTINEZ, M.D., INC.
Orthopaedic Surgery
333 West First Street
Dayton, Ohio 45402
(513) 222-0095

October 4, 1983

Worker's Compensation Division
Delco Moraine-Division GMC
1420 Wisconsin Blvd.
Dayton, OH 45401

Re: Beulah Booker
746982-22

Dear Sir(s):

Mrs. Booker has had multiple examinations and consultations in the past year because of a problem concerning both her wrists which have become tremendously symptomatic while preforming the job she was given which required repetitive motion with both dorsiflexion and volar flexion of the wrists.

Dr. Ronald Moser has also checked the patient in the Industrial Clinic. However, subsequent examination with Dr. Moser and myself in my office

yielded varification of the patient's bilateral distal ulnar problem which is a subluxing problem.

This is the reason for my suggestion to the patient that she have a Darrach's procedure which would minimize the subluxing problem of the ulna and she might overcome her difficulties and possibly be able to return to her previous employment.

I am sure you have received the charges for the patient's previous examinations.

Sincerely yours,

Enrique C. Martinez, M.D.

ECM/pn.

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

BEULAH W. BOOKER — CASE NO. 85-9
Plaintiff — (Judge Dodge)

vs.

DELCO MORAINE, G.M.C. et al.,
Defendants

EMERGENCY MOTION FOR CONTEMPT, REFUSING TO SERVE, INTERFERING WITH SUBPOENAS AND HARRASSMENT OF WITNESSES.

Plaintiff moves this court for contempt, O.R.C. 45 (F), against the defendants plant protection guard for failure to serve subpoenas upon the names listed below, after receiving them form the Montgomery County Sheriff Office who was designated to serve and did according to O.C.R. 45 (C).

Plaintiff demands that this guard be held in contempt of court for interfering and refusing to serve subpoenas and that he/she (John Doe) name of so said plant protection guard be brought into court and to testify to the fact before the jury that these witnesses were subpoena and documents were ordered to be brought to trial.

Plaintiff moves this court that this so-said-guard pay ten thousand dollars per/day for each witnesses who does not show for trial to give testimony and that the above amount triple and double each day. Plaintiff moves this court for the Defendant to pay all expenses of the trial O.C.R. (4).

The names of the unserved witnesses are; Lois Williams, LaDoris (Dot) Smith, Mary Brown, Cindy Lofford, Dora Hunt, and Becky McGuire, Orean Amos.

Plaintiff moves this court for so-said-guard harrassment of witnesses and slaundering remarks toward the court stating the jury trial had been cancelled. Plaintiff received information from witnesses and heard remarks by Lt. Burgess Blanton that trial had been cancelled, he did not

say change to another date, but cancelled. Later, Plaintiff was confronted by other witnesses and received telephone calls to the fact of trial cancellation.

In a telephone conversation with Judge Dodge secretary, Shirley on 6- 8-87, Plaintiff asked if the trial had been cancelled, she stated no, it will convene as stated by the Judge on June 24, 1987.

Plaintiff contacted Defendant's attorney, Brinsfield office on 6-18-87, and talked with Vicki (paralegal) and demanded this type of slaunder be stopped and corrected immediately.

Beulah W. Booker

CERTIFICATE OF SERVICE

This is to certify that a copy of this document is being sent to Gary T. Brinsfield, attorney for

Defendant, Delco Moraine, GMC, 2580 Kettering Tower, Dayton, Ohio 45423 this 19th day of June 1987, by ordinary mail.

Beulah W. Booker

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

BEULAH W. BOOKER
Plaintiff
vs
DELCO MORAINE, GMC, et al,
Defendants

CASE NO. C-3-87-354

AFFIVADIT OF JOE L. ROBINSON

State of Ohio
County of Montgomery

Affiant, Joe L. Robinson, being first duly cautioned and sworn, says that the following statements are true to the best of his knowledge:

1. On the morning of the trial, June 24, 1987, he was asked to come to Judge Riley chambers.

2. He eye witness Judge Riley & Attorney Brinsfield intimidate and harass Plaintiff and told her to go to another court, she was not going to win in this one.

3. He witness Judge Riley tell Plaintiff this is a case for occupational disease not injury and that she was not going to talk about her injuries in his court.

4. They, Judge Riley & Attorney Brinsfield, asked me to convince Plaintiff to drop the complaint, go into another room or down the hall, take as much time as you want to convince her to drop her complaint because she is not going to win.

5. He witness Mr. Brinsfield tell Plaintiff if she didn't drop the complaint, she was going to leose and lose badly and pay all costs.

6. On the witness stand, Judge Riley prohibited me from saying I saw Plaintiff working a job which was injuring her.

7. I testified that I came to Plaintiff department and saw her crying holding both hands up in the air.

8. As Plaintiff witness, I was ordered to leave the courtroom, but as the Defendant witness, Don Abbott was allowed to stay in the courtroom throughout the trial.

9. When Plaintiff complain about my leaving and Abbott staying, the court stated, this is my court I will do as I please.

10. Judge Dodge stated (at a pre-trial conference) he had no objection to my staying in the courtroom with Plaintiff for moral support. He further stated, the motions I have ruled

upon will stand.

11. Judge Riley stated to Plaintiff, it is your job to get your witnesses into court and I suggest you go and call them, I'm not signing no contempt.

Joe L. Robinson

Sworn to and subscribed before me this 12th day of August, 1988.

James G. Miller,
Notary Public
In and for the State
of Ohio My Commission
Expires Mar. 6, 1989

EXCERTS OF THE TRANSCRIPT & WITNESSES TESTIMONIES FROM THE TRIAL OF BOOKER V. DELCO MORAINE, et al, Supra.

THE COURT: Well, we're ready now for opening statements of counsel. Opening statements, again, are not evidence

and are not to be considered by you to be evidence. They are a preview of what the parties expect the evidence to show. They are designed to help you better understand the evidence as it comes to you here in the courtroom As has already been explained to you by Mr. Brinsfield, this is a statutory procedure. It's an appeal from a decision of the Industrial Commission, and the issues really in this case are whether or not Ms. Booker was injuried during the course of her employment. The date of injury is alleged to be on or about the 12th day of May, 1982, as I read from the complaint.....

MR. BRINSFIELD: Your Honor, I move for separation of witnesses.

THE COURT: Your motion will be allowed. All persons present in the courtroom who are going to testify

in this case please retire to the hallway and remain there until you are called, please.

THE COURT: This is what we discussed, you see, in chambers. You see, the issue, the whole question before us today is whether or not you suffered an injury on or about the 12th of May, 1982, as that's defined in the statute.

MR. BRINSFIELD: ..... I represent the employer, Delco Moraine Division, General Motors Corporation. Mrs. Booker brought a Worker's Compensation claim alleging that she had a condition known as carpal tunnel syndrome in her wrists and that this was caused by an accident that took place on May 12, 1982. The evidence will show that she went to hearings before the Industrial Commission, and

they told her no, it wasn't an accident but it was an occupational disease, go file under occupational disease. Instead of doing that and having her claim allowed back in 1982, she chose to pursue this case, and we're in court on that very issue.

JOE ROBINSON, called as a witness on behalf of the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. BOOKER:

Q. Mr. Robinson, for the record, please state where you are or where you were employed and for how long.

THE COURT: yes Do you want to give us your name andaddress for the record.

THE WITNESS: My name is Joe L. Robinson. I live at 5208 Whaley Dr. in Madison Township.

BY MS. BOOKER:

Q. Now, Mr. Robinson, would you state where you are employed or where you were employed and for how long?

A. Okay, answer to the question, I were employed at Delco Moraine for approximately 17 years.

Q. Was you and I employed at the same place?

A. Yes, we were.

Q. Do you personally know me? If so, can you explain to the jury?

A. Yes, I know you as a former employee and also we are engaged to get married.

Q. How long have you known me?

A. Approximately 10 years.

Q. Did you know me in May and June of 1982?

A. Yes. I did.

Q. On about May 12th were you familiar with my job in 513 department?

A. Yes I am.

Q. Could you explain.

A. Okay, in May and June, we were working something like 20 to 22 hours a day. On my breaks, either I come to see you or you come to see me. I came to your department where you were working, as I did hundreds of times, and I saw you on your job with both hands in the air and tears was coming down your cheeks. I asked you what was the trouble.

MR. BRINSFIELD: Objection.

THE COURT: yes, you can't repeat what she said, nor what you said to her.

THE WITNESS: I can't?

THE COURT: No, that's hearsay.

THE WITNESS: Okay, I saw tears

coming down your cheeks. You explained to me, "I'm being disciplined".

MR. BRINSFIELD: Objection.

THE COURT: Yes, that's what she said. You can't say that.

THE WITNESS: Well, you was holding both hands in the air crying.

BY MS. BOOKER:

Q. Mr. Robinson, after I returned to work from being disciplinaired, did you have an occassion to see me on the divider bearing job?

A. Yes, I did.

KAREN LINIGER

THE WITNESS, having been duly sworn, was examined and testified as follows;

BY MS. BOOKER:

Q. For the record, would you state your name and address, please.

A. Karen Lininger, 8170 Brookville-Phillipsburg Road, Brookville.

Q. Mrs. Lininger...would you state

for the record your place of employment?

A. Delco Moraine.

Q. What is your position?

A. Supervisor of the North Medical.

Q. Mrs. Lininger, have you seen me come to you in the medical department complaining that I hurt my hand?

A. Yes.

THE COURT: Could you first of all indicate what date you are referring to now?

THE WITNESS: 5-12-82, medical report, 9:30 in the morning. She was on the divider plate job. She said she was using her left hand only to build up the divider plate and now her left forearm was ~~beginning to~~ ache and her wrist felt weak. They put heat on it and wrap it. She was having problems with her right hand.

that is why she was using her left hand, I believe.

On 5-18 she came to medical at 6:00 p.m. She was on the divider plate job at that time. She was complaining of pain in both wrists. She had been on a code, which was light work, 20 pounds limit, and to avoid repetitive rotation of wrist, hyperflexion or extension of wrist perm. She was given heat and an Ace support.

JIM KEATON

the witness, having been duly sworn, was examined and testified as follows:

BY MS. BOCKER:

Q. Mr. Keaton, for the record, would you state your name and address please?

A. Jim Keaton, 3370 Little York Road, Dayton.

Q. Mr. Keaton, would you state your

position at Delco Moraine?

A. Supervisor.

THE COURT: Do you have any knowledge, Mr. Keaton, of an accident which occurred to Mrs. Booker on or about the 12th day of May, 1982? By accident, I mean something of a violent, external means, totally accidental, a sudden mishap, something which occurred by error or arising out of the ordinary, a happening out of the ordinary.

THE WITNESS: No, Your Honor, I don't. I recall several times taking disciplinary action against Beulah for not performing the job.

BY MR. BRINSFIELD:

Q. Was Mrs. Booker, did she work May 12, 1982?

A. I don't recall specifically her working May 12. My records show that

we took disciplinary action May 11, and my records show May 11 we gave her the balance of the shift, and we also took disciplinary action on the 13th. I don't recall what happened on the 12th.

PAMELA MOORE

the witness, having been duly sworn, was examined and testified as follows:

BY MS. BOOKER:

Q. Mrs. Moore, for the record, would you state your name and address, please?

A. Pamela Moore, 5817 Shady Cove Lane.

Q. Miss Moore, would you state your position with Delco Moraine?

A. I am a Registered Nurse. I work third shift. I am Staff Nurse.

Q. Miss Moore, have you seen me come down to the medical department complaining about pain in my hand?

A. Yes.

Q. To the best of your knowledge, Miss Moore, did I come down to you May---on or about May 12th through the 18th, 1982, complaining about pain in my hand?

A. Yes.

Q. To the best of your knowledge Miss Moore, around that same date, did you put heat or ice pack on my hand? Did you apply it to my hand?

A. Yes.

Q. But to the best of your knowledge, Miss Moore, I did complain I had hurt my hands on those dates

in question?

A. Yes.

MR. BRINSFIELD: At this time, we move for a directed verdict on several grounds.

MS. BOOKER: Objection, Your Honor,

THE COURT: Let him finish his motion. I will hear you in rebuttal.

MR. BRINSFIELD: As you know, this is a case involving an allegation of accidental injury taking place on a particular date in 1982. Without saying anything else, I would just remind the Court Mrs. Booker herself has never taken the stand and described an accidental injury nor has any of the witnesses who she has called in to testify described any type of accidental

injury whatsoever.

THE COURT: I don't think you and I will ever agree on this. The Court has no choice so far as I can see in this matter, it is a question of law, but to dismiss it. We will note your exception to my ruling. You have 30 days in which to bring your appeal.

MS. BOOKER: I will appeal, Your Honor.

THE COURT: You have 30 days. Bring back the jury. Thirty days from the date of the entry, I guess.

MR. BRINGSFIELD: Right, Do you want me to prepare an entry?

THE COURT: Yes, if you will, please.

WORKER'S COMPENSATION

365.05 ACCIDENTAL INJURY (New)

1. INJURY. To decide whether there was an injury and whether the injury was accidental you will apply the following definition. You may not substitute your own idea of the word injury. "Injury includes any injury, whether caused by external accidental means or accidental in character, or of gradual onset and result, received in the course of, and arising out of, the injured employee's employment".

EVIDENCE & INFERENCES.

DEFINITION. Evidence is all the testimony received from the witnesses (including depositons) and(exhibits admitted during the trial) and (facts agreed to by counsel) (and any facts which the court requires you to accept as true).

2. Evidence may be direct or circumstantial, or both.

3. DIRECT EVIDENCE. Direct evidence is the testimony given by a witness who has seen or heard the facts to which he testifies. It includes exhibits admitted into evidence during the trial.

CERTIFICATE OF SERVICE

I hereby certify that on the
day of August, 1990, copy of the fore-
going document were deposited in a
United States mailbox, postage pre-
paid and served upon
Thomas E. Jenks
Christopher F. Johnson
205 East First Street
Dayton, Ohio 45402
Counsel for Defendant, Paul E. Riley.

Beulah W. Booker
Beulah W. Booker

Beulah W. Booker

Beulah W. Booker

Sworn to and subscribed before me this 2nd day of August 1990.

LAWRENCE W. HOLLEY, Notary Public
In and for the State of Ohio
My Commission Expires: [illegible]